APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 07-13648

[Filed May 28, 2008]

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)
versus	)
CARLOS ANDRES GONZALEZ, a.k.a. Andy, FIDEL GONZALEZ, Defendants-Appellants.	)

Appeal from the United States District Court
for the Middle District of Florida

D. C. Docket No. 05-00119-CR-FTM-29-DNF

Before CARNES, BARKETT and PRYOR, Circuit Judges.

PER CURIAM:

Carlos Gonzalez appeals his convictions for conspiracy to distribute more than 1000 marijuana plants, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii), 846, and possession with intent to distribute 100 or more

marijuana plants, 21 U.S.C. § 841(a)(1), (b)(1)(B)(vii), and Fidel Gonzalez appeals his conviction and sentence for conspiracy to distribute more than 1000 marijuana plants, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii), 846. Fidel and Carlos each challenge evidentiary rulings. Fidel also argues that there was a material variance between his indictment and the evidence at trial, insufficient evidence to support his conviction, and a sentencing error. We affirm.

I. BACKGROUND

Fidel and Carlos were involved in the cultivation, distribution, and sale of marijuana. Carlos lived in Miami with Gilberto Perez. Carlos trained Perez about the cultivation of marijuana plants and introduced Perez to Fidel. Perez harvested three crops, each containing 50 to 60 marijuana plants. Fidel and Carlos paid Perez based on the amount that Perez produced and retained "the balance" of the profits. Fidel and Carlos transported the marijuana to New York in 30-pound increments.

Perez later received money from Carlos and Fidel to purchase two homes in Homestead. Fidel helped convert the homes into greenhouses, and Fidel and Carlos delivered marijuana plants to the two locations. Perez and Carlos's father, Jose Hernandez, cultivated the plants and harvested three crops totaling 120 plants. Hernandez also assisted other growers in harvesting ten additional crops, three of which involved a total of 152 plants.

Perez introduced Carlos to Osvaldo Alonso, who later performed electrical work and installed air conditioning in the marijuana greenhouses. Alonso

purchased a house in Homestead that Fidel helped convert into a greenhouse in which Alonso harvested two crops totaling 132 marijuana plants. Fidel, who observed the first harvest and took possession of the crop, divided the profit with Alonso. With profits from the first house, Alonso purchased a second home, where he harvested two additional crops totaling 132 marijuana plants. Fidel and Carlos took possession of the marijuana, and Carlos paid Alonso for the crops.

In the meantime, Carlos recruited Ignacio Carbajal in Miami and introduced him to Fidel. Carbajal purchased a home that Fidel and Carlos helped him to convert into a marijuana greenhouse. Carbajal harvested two crops totaling 108 plants and divided the profits with Carlos. Fidel transported Carbajal to assist others periodically to harvest their marijuana crops.

Carbajal introduced Carlos to his cousin, Ernesto Castillo, who cultivated the marijuana in Carbajal's Miami home and helped harvest marijuana at two other Miami greenhouses. At one harvest, Castillo saw Fidel and Carlos overseeing the operation. When Castillo inquired when he would paid for the harvests, Carbajal and his father told Castillo that Fidel controlled the money in the marijuana operation.

After several crops were stolen from the Miami homes, Carlos and Fidel moved their operations to Cape Coral, where they continued to provide money for individuals in the marijuana network to purchase and convert homes into marijuana greenhouses. The Gonzalezes assisted Perez to purchase a home that Perez used to harvest 14 marijuana plants. Carlos provided Carbajal with money to purchase one Cape

Coral home, in which he harvested three crops totaling 76 plants. Carlos then assisted Carbajal to purchase a second home, where Carbajal harvested 21 plants. Carlos helped Carbajal's father purchase a home in which Fidel helped to harvest 15 to 17 plants. Carlos also opened his home to Jose Pena Pupo, whom Carlos paid to harvest between 115 and 120 plants.

Carlos recruited Armando Garcia in Cape Coral and used Alonso to convert Garcia's house into a marijuana greenhouse. Garcia harvested between 40 and 50 marijuana plants, after which Carlos collected the substance and paid Garcia 24,000 dollars. Garcia thereafter assisted others to harvest four or five crops.

Carlos also recruited his uncle, Carlos Hernandez, to participate in two harvests totaling 124 plants. Fidel visited Hernandez on one occasion to observe the marijuana. Perez and Carbajal also visited Hernandez to advise him about growing marijuana.

After Ernesto Castillo was arrested in Carbajal's home, Fidel and Carlos provided Castillo with money to hire an attorney. Castillo eventually agreed to assist law enforcement to discover marijuana greenhouses in Miami. Castillo later expressed an interest in assisting authorities in Cape Coral. Castillo identified four homes that he had helped convert into greenhouses. Authorities placed a global positioning tracker on Carbajal's vehicle and tracked the vehicle to several other homes in Cape Coral.

Based on information accumulated during the investigation, Cape Coral officers and Drug Enforcement Administration agents executed warrants on seven homes visited by Carbajal and seized 691

marijuana plants. Although neither Fidel nor Carlos was arrested, their names were discovered in the contact lists of seized cellular telephones, and several individuals, including Armando Garcia, were taken into custody. When the authorities searched Garcia's house, they discovered a photograph of Carlos standing in what appeared to be a room of marijuana plants. Authorities later arrested Gilberto Perez and Osvaldo Alonso, and they agreed to cooperate in the investigation.

Fidel and Carlos were indicted for conspiracy to distribute more than 1000 marijuana plants, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii), 846, and possession with intent to distribute 1000 or more marijuana plants, 21 U.S.C. § 841(a)(1), (b)(1)(B)(vii). Before trial, Carlos filed a motion in limine to exclude the photograph seized from Garcia's house. The district court withheld a ruling until after the government laid a foundation for the evidence.

At trial, Gilberto Perez, Jose Hernandez, Armando Garcia, Osvaldo Alonso, Carlos Hernandez, Ignacio Carbajal, Jose Pupo, and Ernesto Castillo testified about their participation in the cultivation and harvesting of marijuana and their interaction with Fidel and Carlos. Jose Hernandez testified that Fidel "controlled the money" in the marijuana operation. Garcia testified that the photograph seized from his home depicted Carlos standing among marijuana "plants that look like the ones that I had in my house."

On cross-examination, Castillo denied that he had told police that Carbajal led the marijuana operation in Cape Coral. The government continued this line of inquiry on redirect examination and asked Castillo to

name the leader of the marijuana organization, to which Castillo answered that he did not know. The government then asked Castillo who he "believed" was the leader of the organization. Fidel objected and argued that the question had been "asked and answered" and that Castillo's opinion was "irrelevant." The district court overruled the objections, and Castillo answered that the leader was "[p]ossibly Fidel."

The jury found Fidel guilty of conspiracy to distribute more than 1000 marijuana plants. The jury found Carlos guilty of both the conspiracy crime and possession with intent to distribute more than 100 marijuana plants. The jury also made specific findings about the quantity of marijuana involved in Fidel's and Carlos's crimes.

Before sentencing, Fidel objected to the presentence investigation report and argued that, because he was acquitted on the possession charge, the marijuana seized in Cape Coral should not be included in the calculation of his sentence. Fidel also objected to his base offense level. Fidel reasserted these objections at sentencing. The district court overruled the objections and stated that the jury found beyond a reasonable doubt that Fidel was guilty of a conspiracy that involved more than 1000 marijuana plants. The district court sentenced both Fidel and Carlos to 120 months of imprisonment and five years of supervised release.

II. STANDARD OF REVIEW

We apply four standards of review in this appeal. We review evidentiary rulings for an abuse of discretion. United States v. Kennard, 472 F.3d 851,

854 (11th Cir. 2006), cert. denied, 127 S. Ct. 3004 (2007). We review de novo challenges to the sufficiency of the evidence and view the evidence in the light most favorable to the government. United States v. Futrell, 209 F.3d 1286, 1288 (11th Cir. 2000). We also review de novo the application of the sentencing guidelines and examine related findings of fact for clear error. United States v. Humber, 255 F.3d 1308, 1311 (11th Cir. 2001). Objections or arguments that are not raised in the district court are reviewed for plain error. United States v. Edouard, 485 F.3d 1324, 1343 (11th Cir. 2007); United States v. Evans, 478 F.3d 1332, 1338 (11th Cir.), cert. denied, 128 S. Ct. 257 (2007); United States v. Dennis, 237 F.3d 1295, 1300 (11th Cir. 2001); United States v. Harness, 180 F.3d 1232, 1234 (11th Cir. 1999).

III. DISCUSSION

Carlos and Fidel Gonzalez raise five separate issues for our consideration. All fail. We address each argument in turn.

A. The Photograph of Carlos Gonzalez Was Admissible.

Carlos argues that the district court erroneously admitted into evidence a photograph that depicted him surrounded by marijuana plants. He contends that the government did not authenticate the photograph and it was unduly prejudicial. We disagree.

The district court did not abuse its broad discretion by admitting the photograph into evidence. Testimony from Armando Garcia that Carlos was featured in the photograph and standing among what appeared to be

marijuana plants provided sufficient information to authenticate the photograph. See Fed. R. Evid. 901(a), (b)(1). Garcia's lack of knowledge about the photographer and the date of the photograph did not affect its admissibility. See United States v. Clayton, 643 F.2d 1071, 1074 (5th Cir. Unit B 1981). The probative value of the photograph outweighed any prejudice created by its admission because it provided physical evidence of Carlos's involvement in the marijuana conspiracy and his actual possession of marijuana. See United States v. Tinoco, 304 F.3d 1088, 1120 (11th Cir. 2002).

B. Testimony Regarding Fidel's Leadership Was Admissible.

Fidel argues, for the first time on appeal, that the district court should have excluded testimony from Ernesto Castillo that Fidel was "possibly" the leader of the conspiracy because the government did not establish that Castillo possessed firsthand knowledge of the matter. This argument fails. Castillo testified that he "knew" Fidel and Carlos, he observed them at a marijuana harvest, he received money from Fidel and Carlos to hire a defense attorney, and his cousin told him that Fidel controlled payment of workers in the marijuana harvesting business. See Fed. R. Evid. 602. Based on Castillo's cumulative knowledge about the conspiracy, the admission of Castillo's testimony did not prejudice Fidel's substantial rights. See United States v. Moriarty, 429 F.3d 1012, 1019 (11th Cir. 2005).

C. There Was No Variance Between Fidel's Indictment and the Evidence Introduced At Trial.

We review an argument of material variance viewing the evidence in the light most favorable to the government to determine whether a reasonable trier of fact could have found that a single conspiracy existed beyond a reasonable doubt. United States v. Castro, 89 F.3d 1443, 1450 (11th Cir. 1996). When an argument of material variance is raised for the first time on appeal, we review for plain error. United States v. Dennis, 237 F.3d 1295, 1300 (11th Cir. 2001). To be reversible error, the facts proved at trial must materially differ from the facts alleged in the indictment and the defendant must suffer substantial prejudice as a result. United States v. Weissman, 899 F.2d 1111, 1114 (11th Cir. 1990).

Fidel's argument that a material variance existed fails. The government introduced evidence that was consistent with the conspiracy charged in Fidel's indictment. Fidel and Carlos were charged with "knowingly and willfully combin[ing], conspir[ing], confederat[ing] and agree[ing] with each other and with other persons . . . to possess with intent to distribute more than one thousand (1000) marijuana plants" beginning in "September 2001, through and including May 17, 2005." Testimony presented by numerous government witnesses established that Fidel and Carlos acted jointly to recruit and assist individuals to purchase and convert houses in Homestead, Miami, and Cape Coral into indoor marijuana greenhouses, to cultivate and harvest over 1000 marijuana plants, and to sell the marijuana.

D. Sufficient Evidence Supports Fidel's Conviction.

Fidel argues, for the first time on appeal, that there was insufficient evidence to prove he conspired to distribute more than 1000 marijuana plants, but this argument fails. When a defendant fails to move for a judgment of acquittal, we will affirm his conviction unless "the evidence on a key element of the offense is so tenuous that a conviction would be shocking." United States v. Bischel, 156 F.3d 1148, 1150 (11th Cir. 1998). Testimony from Gilberto Perez, Jose Hernandez, Osvaldo Alonso, Carlos Hernandez, and Ignacio Carbajal established that Fidel assisted in the cultivation of over 1000 marijuana plants in homes located in Homestead, Miami, and Cape Coral.

E. Fidel Was Correctly Sentenced For Conspiring to Distribute More Than 1000 Marijuana Plants.

Fidel argues that his sentence was improperly enhanced for his involvement with more than 1000 marijuana plants because witnesses did not distinguish marijuana seedlings from marijuana plants. His argument fails. Testimony supports the finding by the jury that Fidel conspired to distribute more than 1000 marijuana plants.

IV. CONCLUSION

The convictions of Carlos Gonzalez and the conviction and sentence of Fidel Gonzalez are **AFFIRMED.**

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

No.: 2:05-cr-119-FtM-29DNF

USM No.: 79182-004

[Filed July 31, 2007]

UNITED STATES OF AMERICA	)
	)
-vs-	)
	)
FIDEL GONZALEZ	)
	)

Rene A. Sotorrio, Esq., Retained
800 Douglas Road, Suite 219
Coral Gables, Florida 33134

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts One of the Superseding Indictment. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 U.S.C.§§ 841(a)(1), 841(b)(1)(A)(vii), 846	Conspiracy to Possess with Intent to Distribute More than One Thousand Marijuana Plants	May 17, 2005	One

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, as modified by United States v. Booker, 125 S. Ct. 738 (2005).

Original Indictment dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

July 31, 2007

/s/ John E. Steele
JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

July 31, 2007

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 Months as to Count One.

The Court recommends to the Bureau of Prisons:

1. Participation in the Institution Hearing Program with the Fedearl Bureau of Prisions to determine the defendant's removal status while incarcerated.

2. Incarceration in a facility close to home (Miami, Florida).

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

_____

_____

Defendant delivered on _____ to _____ at , _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) years**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;

2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4. The defendant shall support his or her dependents and meet other family responsibilities;

5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;

7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a

felony, unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

The defendant shall also comply with the following additional conditions of supervised release:

1. The defendant shall provide the Probation Officer access to any requested financial information.

2. If the defendant's removal status is not resolved while he is incarcerated, then pursuant to 18 U.S.C. §3583(d), the defendant is to be delivered, upon release from imprisonment, to a duly authorized immigration official to determine if removal is appropriate. Should removal be ordered, the defendant is to remain outside the United States, unless authorized by the Secretary for the Departmnet of Homeland Security or the appropriate immigration authority.

3. Having been convicted of a qualifying felony offense, the defendant shall cooperate with the Probation Office in the collection of DNA, if not already collected by the Bureau of Prisons.

4. The defendant shall refrain from any unlawful use of a controlled substance, and shall submit to one drug test within 15 days of placement on supervised release and a least two periodic drug tests thereafter as directed by the probation officer. Based on the Court's determination that additional drug urinalysis is necessary, the Court authorizes random drug testing not to exceed 104 tests per year.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

Total Assessment	Total Fine	Total Restitution
$100.00	Waived	N/A

The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

Other:*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

It is **further ordered** that the defendant shall forfeit to the United States as follows:

Money Judgment in the amount of $1,290,000.00, jointly and severally with the co-defendant, Carlos Andres Gonzalez.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 07-13648-GG

[Filed August 4, 2008]

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)
versus	)
CARLOS ANDRES GONZALEZ, a.k.a. Andy, FIDEL GONZALEZ, Defendants-Appellants.	)

Appeal from the United States District Court for the Middle District of Florida

Before CARNES, BARKETT and PRYOR, Circuit Judges.

PER CURIAM:

The *pro se* petition(s) for rehearing filed by Appellant Fidel Gonzalez is DENIED.

ENTERED FOR THE COURT:

/s/
UNITED STATES CIRCUIT JUDGE

ORD-41

OCT 29,2008 09:32
U S GOVERNMENT
404 335 6250

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NO. 2:05-cr-119-FtM-29DNF
21:841(a)(1)
21:841(b)(1)(A)(vii)
21:841(b)(1)(B)(vii)
21:846 (Conspiracy)
21:853 (Forfeiture)
18:2

[Filed June 29, 2006]

UNITED STATES OF AMERICA	)
	)
v.	)
	)
CARLOS ANDRES GONZALEZ,	)
a/k/a "Andy", and	)
FIDEL GONZALEZ,	)
a/k/a "Fidelito"	)
	)

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE

From a date unknown, but at least by in or about September 2001, through and including May 17, 2005, in Lee County, in the Middle District of Florida and elsewhere,

CARLOS ANDRES GONZALEZ
a/k/a/ "Andy", and
FIDEL GONZALEZ,
a/k/a "Fidelito",

the defendants herein, did knowingly and willfully combine, conspire, confederate and agree with each other and with other persons known and unknown to the Grand Jury, to possess with intent to distribute more than one thousand (1000) marijuana plants, a Schedule I Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(vii).

All in violation of Title 21, United States Code, Section 846.

COUNT TWO

On or about May 17, 2005, in Lee County, in the Middle District of Florida,

CARLOS ANDRES GONZALEZ
a/k/a "Andy", and
FIDEL GONZALEZ
a/k/a "Fidelito",

the defendants herein, did knowingly and willfully possess and aid and abet the possession of, with intent

to distribute, more than one hundred (100) marijuana plants, a Schedule I Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B)(vii) and Title 18, United States Code, Section 2.

FORFEITURES

1. The allegations contained in Counts One and Two of this Superseding Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to the provision of Title 21, United States Code, Section 853.

2. From their engagement in the violations alleged in Counts One and Two of this Superseding Indictment, punishable by imprisonment for more than one year, the defendants,

CARLOS ANDRES GONZALEZ
a/k/a "Andy", and
FIDEL GONZALEZ,
a/k/a "Fidelito",

shall forfeit to the United States of America, pursuant to Title 21, United States Code, Section 853(a)(1) and (2), all of their interest in:

a. Property constituting, or derived from, any proceeds the defendants obtained, directly or indirectly, as a result of such violations; and

b. Property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violations.

Said property, interests, claims, and contractual rights to include, but are not limited to, the following: Intangible property and real property, including all improvements thereon and appurtenances thereto, described as follows:

1. **1927 SE 17th Place, Cape Coral, Florida,** also known as Cape Coral Unit 89, Blk 5382, PB 23, PG 158, Lots 35 & 36, owner of record New Millennia Corporation;

3. If any of the property described above, as a result of any act or omission of the defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property under the provision of Title 21, United States Code, Section 853(p).

Dated: 6/29/2006 A TRUE BILL,

/s/
Foreperson

PAUL I. PEREZ
United States Attorney

By: /s/ Jesus M. Casas
Jesus M. Casas
Assistant United States Attorney
Trial Counsel

By. /s/ Yolanda G. Viacava
Yolanda G. Viacava
Assistant United States Attorney
Asset Forfeiture Attorney

By: /s/ Douglas Malloy
Douglas Molloy
Assistant United States Attorney
Chief, Fort Myers Division

FORM OED-34
APR 1991

No.

UNITED STATES DISTRICT COURT
Middle District of Florida
Fort Myers Division

THE UNITED STATES OF AMERICA

vs.

CARLOS ANDRES GONZALEZ
a/k/a "Andy", and
FIDEL GONZALEZ,
a/k/a "Fidelito"

SUPERSEDING INDICTMENT

Violations:

21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(vii), 841(b)(1)(B)(vii), 846, 853(forfeiture), and 18 U.S.C. §2

A true bill.

/s/_____
Foreperson

Filed in open court this 29th day
of June, A.D. 2006.

_____
Clerk

Bail $_____

APPENDIX E

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Code
Title 18. Crimes and Criminal Procedure
Part II. Criminal Procedure
Chapter 227. Sentences
Subchapter A. General Provisions

18 U.S.C. § 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United

States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

* * *